capital, and hence depreciation, is not without logical foundation in economic theory. In *Earl of Derby* v. *Aylmer* [1915], 3 K. B. 374, a somewhat analogous question was raised concerning a tax which was imposed on the income which the Earl received from the services of two stallions for breeding purposes. He claimed a deduction as depreciation for the annual loss in value of the horses, computed on the probable length of time during which they could be used for the above purposes. In rejecting the Earl's claim, the court emphasized a consideration which is of prime importance in dealing with cases arising under income tax laws—while such contentions may be sound from an accountant's point of view, courts must be governed by the intention of the legislature.

TAXATION—INHERITANCE TAX—DOWER.—The State attempted to collect inheritance tax on a dower interest allotted to a widow, upon her dissent from testator's will. A statute provided that all real and personal property which passes by will or intestate laws of the state from any person who may die seized of the same should be subject to an inheritance tax, allowing, however, exemptions in favor of a widow and children for certain amounts. *Held,* dower is property which passes by the intestate laws of the State. *Corporation Commission et al* v. *Dunn et al* (N. C., 1917), 94 S. E. 481.

The weight of authority is represented by the recent case of *In re Bullen's Estate* (Utah, 1915), 151 Pac. 533, which holds that dower passes to the widow as of her own right by purchase and not by "intestate laws". *In re Weiler's Estate,* 122 N. Y. S. 608; *In re Shield's Estate* (N. Y.) 68 Misc. 264; *Crenshaw* v. *Moore,* 124 Tenn. 528; *Commonwealths Appeal,* 34 Pa. 204. Only one case can be found which supports the theory of the principal case that dower is inherited and is subject to an inheritance tax. *Billings* v. *People,* 189 Ill. 472. In the concurring opinion it was urged that the intention of the legislature, as shown by the history of legislation on the subject and the changes made by the act in question whereby the widow was allowed an exemption, was that dower should come within the meaning of the phrase "intestate laws of the State". But the dissenting opinion maintained the view that the fact, that the widow is allowed an exemption where none was allowed before, does not show that her dower is taxable as she may derive personal property from her husband under the intestacy law as one of the distributees, and to this the exemption would apply, and not to property already made not taxable by the language of the statute.

WILLS—CONTRACT TO OPERATE ON DEATH.—An action in assumpsit was brought alleging that defendant promised plaintiff's decedent in writing to pay plaintiff $275 for the interest of decedent in the business in which decedent and defendant were engaged, in case defendant should survive, that the consideration for the promise was the agreement of decedent that defendant should have the business in that event, and that defendant took possession on the death of his partner. *Held,* no cause of action was stated; because the transaction alleged was testamentary, not contractual, and retaining possession proved nothing, because a surviving partner is entitled to do so. *Ferrara* v. *Russo* (R. I., 1917), 102 Atl. 86.

In reaching this conclusion the court relied on the cases which hold that the test to determine whether a transaction is testamentary, is whether rights are to arise on the death of the maker of the instrument or on the execution of it. Admitting that this test is sound, as no doubt it is, it is submitted that it is wholly misapplied in the instant case. True, the defendant's right and his liability to pay were to become absolute upon survivorship, an event that would happen, if at all, on the death of the plaintiff's decedent; but on the execution of the instrument he acquired a vested right to take on a future contingency, which the decedent could not defeat by revocation, a feature wholly inconsistent with a testamentary disposition, and one of the primary objects of the contract was to give the defendant this indefeasible right. A will is a disposition to take effect on the death of the disposer, not an acquisition to take effect on the death of the acquirer. Even a liability to pay to arise on the death of the obligor is not testamentary. *Eisenlohr's Est.* (Pa. Sup. Ct. 1917), 102 Atl. 115, a promise by a partner to pay on his death.